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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Communication No. 478/2011

Decision adopted by the Committee at its fifty-second session, 28 April–23 May 2014

Submitted by:	Sergei Kirsanov (not represented by counsel)
Alleged victim:	The complainant
State party:	Russian Federation
Date of complaint:	11 July 2011 (initial submission)
Date of decision:	14 May 2014
Subject matter:	Excessive detention in substandard conditions during pretrial proceedings
Procedural issue:	Non-substantiation
Substantive issues:	Torture, ill-treatment, lack of effective investigation, redress for the victim
Articles of the Convention:	1, 4, 12, 13, 14, 15, 16 and 22

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-second session)

concerning

Communication No. 478/2011

Submitted by:	Sergei Kirsanov (not represented by counsel)
Alleged victim:	The complainant
State party:	Russian Federation
Date of complaint:	11 July 2011 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 May 2014,

Having concluded its consideration of complaint No. 478/2011, submitted to the Committee against Torture by Sergei Kirsanov under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1. The complainant is Sergei Kirsanov, a national of the Russian Federation, born on 30 November 1969. The complainant claims to be a victim of violations by the State party of articles 1, 4, 12, 13, 14 and 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter "the Convention"). Although it was not raised explicitly by the complainant, the communication may raise issues under article 16 of the Convention. The complainant is not represented by counsel.

The facts as submitted by the complainant

2.1 The complainant submits that, on 28 September 2001, Samara Regional Court convicted him for murder, that he was sentenced to life imprisonment, and that at the time of the submission he was serving a life sentence in the Permsk regional prison.

2.2 The complainant submits that in 2001, during the pretrial investigation, he spent an excessive amount of time (almost four months) in temporary confinement ward No. 2 in the city of Tolyatti, and that his detention in that ward violated the provisions of Federal Law No. 103 on the detention in custody of suspects and those accused of having committed crimes, adopted on 15 July 1995, which provides that arrested individuals may be held in temporary confinement wards for no more than 10 days.

2.3 The complainant submits that, while in detention in the temporary confinement ward, he was subjected to torture and inhuman treatment. He submits that most of the other detainees were smokers, and that he was exposed to passive smoking all the time. He was not allowed to leave the cell for walks and had no possibility of exercising. He was fed only once a day and the food was of bad quality. There was no plumbing, toilet or ventilation in the cell. Instead of a toilet, the detainees used a metal bucket, and he had no privacy when using it as there were other people present in the cell. There was no running water and the detainees were given a bucket of water. The detainees were taken to toilets outside the cell twice a day to empty their buckets and to get drinking water. The complainant also submits that he was not given bedding or basic toiletry items. The complainant contends that this was done on purpose, so he could not sleep and rest at night. The complainant submits that this was done in order to pressure him into admitting the crime of which he was accused. He also claims that because of the conditions in the temporary confinement ward, he was not able to prepare for his trial.

2.4 The complainant submits that his defence attorney, appointed ex officio, did not assist him properly during the trial, and refused to assist him in complaining about torture and inhuman treatment in the temporary confinement ward.

2.5 The complainant submits that he complained about ill-treatment to the first instance court during his trial, but that the court disregarded his complaints.

2.6 The complainant submits that, on an unspecified date, he filed a complaint with the Prosecutor's Office regarding the duration and the inhuman conditions of his detention in the temporary confinement ward. On 26 June 2006, the Prosecutor's Office of Samara Region responded in a letter that at the time of the complainant's confinement, decisions regarding where and for how long to hold suspects in pretrial detention were under its jurisdiction. The letter confirmed that the complainant had been kept in the temporary confinement ward from 14 December 2000 to 2 May 2001 and that the conditions in the ward were substandard. The letter also stated that at the time of the inquiry the temporary confinement ward was closed for renovation, and that there was no possibility of subjecting any officials to disciplinary action because the prosecutor who was in charge at the time of the complainant's detention had been dismissed in 2002 and the director of the ward had retired in 2003.

2.7 The complainant submits that, on an unspecified date, he filed a complaint with the Prosecutor's Office requesting recognition that his lengthy confinement in the temporary confinement ward in inhuman conditions constituted torture and demanding prosecution of the officials responsible. His complaint was rejected on 27 December 2008 as a result of a ruling by an investigator. He appealed the rejection to Avtozavodsky District Court, however in a ruling made on 22 June 2009, the Court, while recognizing that the complainant had been detained for an excessive amount of time and in substandard conditions, refused to recognize that that treatment constituted torture and refused to order a criminal investigation. The complainant's subsequent cassation appeal and request to Samara Regional Court for a supervisory review were also rejected, on 21 August 2009 and 20 November 2009 respectively. On 10 March 2010, the complainant's final appeal was rejected by the Supreme Court of the Russian Federation. The complainant contends that he has exhausted all available and effective domestic remedies.

The complaint

3.1 The complainant claims that the inhuman conditions of his detention at the temporary confinement ward amounted to torture. He submits that the sheer length of his detention also amounted to torture and degrading treatment, which was perpetrated by the State in order to elicit a confession, in violation of article 15 of the Convention.

3.2 The complainant also submits that the State party violated his rights under articles 12 and 13 of the Convention, by failing to investigate his torture claims. The complainant further submits that the 22 June 2009 ruling by Avtozavodsky District Court violated article 4 of the Convention, because the Court failed to recognize the acts of the State officials, who placed and kept the complainant in the temporary confinement ward, as torture and refused to open a criminal investigation.

State party's observations on admissibility and on the merits

4.1 On 27 December 2011, the State party described the facts regarding the complainant's conviction. In addition, it submits that his allegations of torture and cruel treatment were studied by the first instance criminal court and that they "could not be confirmed". It further submits that, on 5 December 2008, Samara District Court reviewed the complainant's civil claim for moral damages caused by his prolonged detention in humiliating conditions in the temporary confinement ward. The Court found that, in violation of article 13 of the Federal Law on the detention in custody of suspects and those accused of having committed crimes, the complainant was held in the temporary confinement ward from 14 December 2000 to 2 April 2001 and again from 25 June 2001 to 24 July 2001. The Court also found that the complainant's allegations regarding some of the conditions were true, namely that he had not been provided with bedding or toiletry items, that there was no table, toilet or sink in the cell, that showers were seldom allowed and then only with cold water, and that no walks outside the cell were allowed. The Court stated that other allegations made by the complainant could not be confirmed, namely that there were insects in the cell, that the light was always on, that there was no ventilation, and that he was only fed once a day. The Court awarded the complainant 10,000 roubles of compensation for moral damages.

4.2 The State party submits that, since the complainant was awarded just compensation by the civil court, he has lost his "victim" status and therefore his communication to the Committee is inadmissible.

4.3 The State party also submits that, in 2010, the complainant entered into correspondence with the European Court of Human Rights in connection with his detention in the Tolyatti temporary confinement ward. The State party maintains that his application, registered under No. 47448/10, was declared inadmissible by the European Court, and that his communication before the Committee against Torture is therefore inadmissible under article 22, paragraph 5 (a), of the Convention. The State party further submits that the communication is not sufficiently substantiated and constitutes an abuse of the right of submission.

Complainant's comments on the State party's observations

5.1 On 31 January 2012, the complainant contested the State party's submission that the first instance criminal court had reviewed his allegations of torture and cruel treatment. He submits a copy of the Supreme Court's cassation decision, dated 29 April 2002, which states that the allegations by the complainant that he had been subjected to pressure by the investigating officers and that they had used unlawful methods of investigation were unfounded and were not taken into consideration. He further refers to the decision of Samara District Court on his civil claim for moral damages, which confirmed violations of the Federal Law on the detention in custody of suspects and those accused of having committed crimes, with regard to the complainant. He maintains that the above-mentioned decision demonstrates that the criminal courts failed to investigate his allegations and that the verdict against him and the subsequent decisions of the higher courts were based on evidence collected through unlawful methods of investigation.

5.2 With regard to the State party's submission that he had lost his "victim" status because he had been awarded compensation, the complainant emphasizes that he had to file a civil law suit in order to obtain the compensation and that the issue of opening a criminal investigation into his allegations of torture falls outside the jurisdiction of the civil courts. Furthermore, the civil court decision did not declare that torture or degrading treatment had taken place in violation of article 21, paragraph 2, of the Constitution of the Russian Federation. The complainant further maintains that the State party violated its obligation under article 4, paragraph 1, of the Convention to ensure that all acts of torture are viewed as offences under its criminal law. In addition, he maintains that the State party violated his rights under articles 14 and 15 of the Convention.

5.3 With regard to the State party's submission that his communication was inadmissible because it had been reviewed and rejected by the European Court of Human Rights, the complainant submits that in 2010 he addressed an application to the European Court regarding violations of his right to defence because of the inadequate legal assistance provided by his defence attorney. He submits that he was informed in a letter dated 18 August 2010 that his application had been registered with the number 47448/10 and was subsequently informed in a letter dated 24 September 2010 that his application had been rejected. The complainant points out that the last decision of Avtozavodsky District Court relating to his detention in the temporary confinement ward entered into force on 21 August 2009 and that his application was not submitted to the European Court until 7 June 2010, and therefore, even if it was on the same subject, it would have been rejected since it was submitted after the six-month deadline.

5.4 With regard to the State party's submission that the communication is not sufficiently substantiated and constitutes an abuse of the right of submission, the complainant notes that the State party does not address the substance of his complaint, namely the refusal by its authorities to recognize that he had been subjected to torture and the refusal to initiate a criminal investigation into his allegations. He maintains that he has substantiated his allegations and makes reference to the decision of Samara District Court on his civil claim for moral damages.

State party's further observations

6.1 On 17 August 2012, the State party reiterated its submission regarding the criminal charges and conviction against the complainant. It reiterates that his "arguments" that the investigating officers had used unlawful methods of investigation were "verified" by the court and could not be confirmed, since they were "refuted" by the "body of evidence" reviewed by the court. The State party further reiterates the content of the 5 December 2008 decision of Samara District Court (see para. 4.1 supra). It further states that on 27 December 2008, an investigating officer from the Tolyatti Investigative Committee issued a ruling refusing the initiation of a criminal prosecution against the person who held the position of head of the temporary confinement ward at the time of the complainant's detention. It maintains that the investigation revealed that the complainant and his accomplice would be killed if they were transferred to the regular pretrial detention facility, because their crimes had affected the interests of organized crime groups.

6.2 In response to the complainant's statement that he still considers himself a victim of violations of the Convention, the State party submits that the domestic civil court ruled in his favour, and that in determining the size of the compensation, the court took into consideration not only the "degree of guilt" of the perpetrator and "other relevant circumstances" but also the degree of physical and moral suffering "connected with the plaintiff's individual characteristics" and the requirements of reasonableness and justice.

6.3 In response to the complainant's allegation of a violation of article 4, paragraph 1, by the State party, the latter submits that article 117 of its Criminal Code defines torture and

that it could not be confirmed that the complainant had been subjected to torture. The State party submits that the complainant had submitted numerous complaints in that regard and that the Prosecutor's Office had repeatedly refused to open a criminal investigation, with the latest refusal dated 27 December 2008, since no evidence of a crime had been found. The complainant appealed the 27 December 2008 decision to Avtozavodsky District Court, which rejected his appeal on 22 June 2009. His subsequent cassation appeal was rejected too, on 21 August 2009, by Samara Regional Court. The court decisions confirm the conclusion of the investigation that no crime took place. Accordingly, the complainant's communication "is not subject to review under article 22 of the Convention".

Complainant's further information

7.1 On 17 September 2012, the complainant made reference to articles 9, 10, 11, 95 and 108 of the Criminal Procedure Code of the Russian Federation and maintains that his detention in violation of Federal Law No. 103 on the detention in custody of suspects and those accused of having committed crimes constituted a violation of the Criminal Procedure Code. He further makes reference to a ruling of the Constitutional Court of the Russian Federation that stated that not only should the decision on a case be just but so should the entire criminal procedure.[1] He also alleges other violations of the Criminal Procedure Code.

7.2 The complainant also submits that he was not provided with a lawyer at the time of his arrest, initial detention and initial interrogation. The complainant further submits that, immediately after his arrest, the head of the Regional Police Department in Tolyatti subjected him to a beating and threatened him with further beatings if he did not provide a confession with content as requested by the investigator. He submits that he was subjected to further beatings during his detention in the temporary confinement ward and that he was denied medical assistance. He submits that he is only referring to the beating and the threats for information purposes, because he has no documentary evidence and because his complaints were not registered and processed. He also submits that the defence lawyer appointed ex officio did not take any measures to prevent him from being tortured, and "hid the facts". The complainant reiterates that he was kept in the temporary confinement ward in order to break him physically and morally and to prevent him from preparing his defence.

State party's further observations

8.1 On 28 March 2013, the State party reiterated the circumstances relating to the conviction against the complainant. It submits that an analysis of the complainant's submissions to the Committee shows that he is trying to achieve a review of the verdict against him and is therefore abusing his right to submission. The State party maintains that the complainant's allegations that he was denied a defence attorney and was subjected to beatings by law enforcement officials do not correspond to reality. According to the case file, on 12 December 2000, the complainant made a confession to the police; he was questioned as a witness and it was explained to him that, in accordance with article 51 of the Constitution of the Russian Federation, he was not obliged to testify against himself. He was arrested on 13 December 2000 at 10 p.m. and again his rights under article 51 of the Constitution were explained to him, which is evidenced by his signature. He stated in the protocol that he did not require the assistance of a lawyer. On 15 December 2000, as the result of a ruling by the investigator responsible, the complainant was detained on remand and was declared to be an accused. His rights were explained to him, including his right to defence, in the presence of a lawyer, all of which is confirmed by his signature on the

[1] The complainant refers in particular to Constitutional Court ruling No. 11-P, dated 27 June 2000.

protocol. Furthermore, the complainant stated in writing that the police and the Prosecutor's Office did not "apply any pressure" on him. He did not object to his interests being represented by the said lawyer. His guilt was proved by the entirety of the evidence, and when determining his sentence, the court took into account information regarding the personality of the accused. All arguments put forward by the complainant at the court of second instance were examined by the court and declared to be unsubstantiated. In particular, his confession was recognized to be "authentic" and in accordance with the rest of the evidence.

8.2 The State party further reiterates that the complainant has won a civil law suit, but that he failed to raise in court the allegations that his complaints to the management of the temporary confinement centre were not reviewed and that he was denied medical assistance. The State party again reiterates that Samara Regional Court granted the complainant 10,000 roubles of compensation for moral damages and that the Prosecutor's Office repeatedly refused to initiate criminal investigations regarding his excessive detention in the temporary confinement ward. Therefore the complainant's submission does not contain any new information.

Complainant's further information

9. On 4 June 2013, the complainant submitted that, in its latest submission, the State party does not provide any new arguments, and states that he has no further comments.

Issues and proceedings before the Committee

Consideration of admissibility

10.1 Before considering any complaint submitted in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

10.2 The Committee takes note of the State party's submission that the communication should be declared inadmissible because in 2010 the complainant submitted an application to the European Court of Human Rights on the same matter, which was declared inadmissible. However, the Committee notes the complainant's explanations that the subject matter of his application to the European Court was different and that it was submitted more than six months after the entry into force of the last domestic court's judgement relating to the complainant's detention in the temporary confinement ward. The Committee observes that if the complainant's application to the European Court had concerned his detention in the temporary confinement ward, the European Court would have declared it inadmissible for failure to meet the six-month deadline established in article 35, paragraph 1, of the European Convention on Human Rights. The Committee also observes that, instead of declaring his application inadmissible under that article, the European Court rejected it with the statement that it contained no violation of the rights and freedoms enshrined in the European Convention or its protocols. The Committee therefore concludes that the European Court has not examined the same matter. In the circumstances, the Committee considers that it is not precluded, by the requirements of article 22, paragraph 5 (a), of the Convention, from examining the present communication.

10.3 The Committee takes note of the State party's submission that since the complainant had been awarded compensation by the civil court, he had lost his "victim" status and therefore his communication to the Committee was inadmissible. The Committee observes that the complainant's allegations raise issues under the Convention and that the issue of whether he was awarded fair and adequate compensation relates to the merits of his allegations under article 14 of the Convention. The Committee further recalls that any State party that has made the declaration provided for under article 22 of the Convention has

recognized the competence of the Committee to receive and consider complaints from individuals who claim to be victims of violations of one or other of the provisions of the Convention. In the circumstances, the Committee considers that it is not precluded by the requirements of article 22 of the Convention from examining the question of whether or not the complainant is a victim of violations of the Convention on the merits.

10.4 The Committee also takes note of the State party's argument that the communication should be declared inadmissible on the grounds that it was submitted in abuse of the right of submission, because the complainant appeared to be seeking a review of his verdict and sentence. The Committee observes that, under article 15 of the Convention, the State party has accepted the obligation of ensuring that any statement that is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, and therefore the submission by the complainant relates to the merits of his allegations under article 15 of the Convention. In the circumstances, the Committee considers that it is not precluded, by the requirements of article 22, paragraph 2, of the Convention, from examining the present communication.

10.5 The Committee takes note of the complainant's allegation that the State party violated its obligations under article 4 of the Convention. However, the Committee is of the opinion that the author has failed to substantiate such a claim for the purposes of admissibility.

10.6 The Committee further takes note of the complainant's allegations that he was not provided with a lawyer at the time of his arrest, initial detention and initial interrogation, that immediately after his arrest and while in the temporary confinement ward he was subjected to beatings, and that he was denied medical assistance. The Committee observes, however, that the above-mentioned allegations do not appear to have been raised before the domestic authorities, and therefore declares them inadmissible under article 22, paragraph 5 (b), of the Convention.

10.7 The Committee considers that the complainant's remaining allegations raise issues under articles 1, 12, 13, 14 and 15 of the Convention, and accordingly declares them admissible and proceeds to their examination on the merits. The Committee also notes that the facts in the communication could raise issues under article 16 of the Convention.

Consideration of the merits

11.1 The Committee has considered the communication in the light of all the information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

11.2 The Committee notes the claim that the complainant was subjected to torture, as defined by article 1 of the Convention. It notes that some of the facts relating to the complainant's prolonged detention in the temporary confinement ward are not disputed by the State party, namely that the complainant was held in the temporary confinement ward from 14 December 2000 to 2 April 2001 and again from 25 June 2001 to 24 July 2001, that he was not provided with bedding or toiletry items, that there was no table, toilet or sink in the cell, that showers were seldom allowed and then only with cold water, and that no walks outside the cell were allowed. The Committee also notes that the State party has disputed other allegations made by the complainant, namely that there were insects in the cell, that the light was always on, that there was no ventilation and that he was only fed once a day. The Committee observes that the conditions in which the complainant was detained for a prolonged period of time do not appear to have caused "severe pain and suffering" within the meaning of article 1, paragraph 1, of the Convention. However, the Committee considers that, even without taking the disputed facts into consideration, the

conditions of detention in the temporary confinement ward amounted to cruel, inhuman or degrading treatment within the meaning of article 16 of the Convention.

11.3 With regard to the alleged violations of articles 12 and 13, the Committee recalls its jurisprudence[2] that a criminal investigation must seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any person who may have been involved therein. The Committee observes that the authorities of the State party conducted an investigation into the complainant's allegations, which confirmed some of his allegations regarding the duration and conditions of his detention in the temporary confinement ward and established who the officials were who were responsible for his placement there. Accordingly, the Committee finds that the State party did not violate the complainant's rights under articles 12 and 13 of the Convention.

11.4 With regard to the alleged violations of articles 14 and 15 of the Convention, the Committee notes that the scope of application of the said provisions only refers to torture in the sense of article 1 of the Convention and does not cover other forms of ill-treatment. Moreover, article 16, paragraph 1, of the Convention, though specifically referring to articles 10, 11, 12 and 13, does not mention articles 14 and 15 of the Convention. Nevertheless, the State party is obliged to grant redress and fair and adequate compensation to the victim of an act carried out in breach of article 16 of the Convention. The positive obligations that flow from the first sentence of article 16 of the Convention include an obligation to grant redress and compensate the victims of an act carried out in breach of that provision.[3] The Committee observes that although the complainant was granted compensation, in order to obtain it he had to file a civil law suit and to prove his allegation in a civil court, despite the findings of an investigation by the Prosecutor's Office. The Committee further observes that the findings of the civil court resulted in the complainant being awarded a symbolic amount of monetary compensation and that the civil court had no jurisdiction to impose any measures on the individuals responsible for the cruel, inhuman or degrading treatment. The Committee is therefore of the view that the State party has failed to observe its obligations under article 16 of the Convention by failing to provide the complainant with redress and with fair and adequate compensation.[4]

12. The Committee, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it disclose violations of article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

13. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to take steps to provide the complainant with redress, including fair and adequate compensation. The State party is also under an obligation to prevent similar violations in the future. The Committee invites the State party to inform it, within 90 days of the date of the transmittal of this decision, of the steps that it has taken in response to the present decision.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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[2] See communication No. 59/1996, *Encarnación Blanco Abad* v. *Spain*, Views adopted on 14 May 1998, para. 8.8.

[3] See communication No. 161/2000, *Hajrizi Dzemajl et al.* v. *Yugoslavia*, decision adopted on 21 November 2002, para. 9.6.

[4] See also communication No. 261/2005, *Osmani* v. *Serbia*, decision adopted on 8 May 2009, para. 10.8.